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Supreme Court of the United States

OCTOBER TERM, 1952

No. ~~784~~ 61

STATE OF NEVADA AND THE PEOPLE OF THE STATE OF NEW YORK,
Petitioners,

v.

JOSEPH STACHER,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WHITE PINE AND BRIEF IN SUPPORT OF PETITION.

STATE OF NEVADA,
Petitioner,

WILLIAM T. MATTHEWS,
Attorney General of Nevada,
Solicitor for the State of Nevada.

THE PEOPLE OF THE STATE OF NEW YORK,
Petitioners,

NATHANIEL L. GOLDSTEIN,
Attorney General of New York,
WENDELL P. BROWN,
Solicitor General of New York,
Solicitors for The People of the State of New York.

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BATAVIA TIMES, LAW PRINTERS,
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INDEX.

PAGE

Petition For Writ of Certiorari 1
Summary Statement 2
Jurisdictional Statement 3
The Questions Presented 4
Reasons Relied on For Allowance of Writ 5
Brief in Support of Petition 8
Statement 8
Jurisdiction 8
The Order Sought to be Reviewed 8
The Questions Presented 8
Outline of Argument 9
Argument 9
I. The District Court of Nevada Was in Error in Passing Upon the Sufficiency of the New York Indictment 9
II. The New York Indictment Is Valid and Sufficient and It Substantially Charges the Respondent with the Commission of Crimes Under the Laws of the State of New York .. 11
Appendix 19

Citations

United States Constitution

Article IV, § 2, ¶ 2 ..... 4, 5, 9

United States Statutes

28 U. S. C. § 1257(3) 3
18 U. S. C. § 3182 ..... 4, 5, 9

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PAGE

New York Statutes

Code of Criminal Procedure § 142 16
Code of Criminal Procedure § 275 12
Penal Law § 580 .....12, 15, 19
Penal Law § 881 16
Penal Law § 889 .....12, 16, 19
Penal Law § 932 .....12, 14, 20

Cases

Appleyard v. Massachusetts, 203 U. S. 222 (1906) 6
Biddinger v. Commissioner of Police, 245 U. S. 128 (1917) 11
Drew v. Thaw, 235 U. S. 432 (1914) 4, 11
Ex Parte Reggel, 114 U. S. 642 (1885) 5
Ex Parte Sullivan, 65 Nev. 128, 189 P. 2d 338 (1948) 3
Marino v. United States, 91 F. 2d 691 (1937) 16
McNichols v. Pease, 207 U. S. 100 (1907) 6
Munsey v. Clough, 196 U. S. 364 (1905) 5, 9
People v. Farson, 244 N. Y. 413, 155 N. E. 724 (1927).. 14
People v. Hines, 284 N. Y. 93, 29 N. E. 2d 483 (1940).14, 16
People v. Seldner, 62 App. Div. 357, 71 N. Y. Supp. 35 (1901) 13
People v. Smith, 177 App. Div. 152, 163 N. Y. Supp. 283 (1917) 17
Pierce v. Creecy, 210 U. S. 387 (1908) 5, 10
South Carolina v. Bailey, 289 U. S. 412, 419 (1933) ...4, 6
United States v. Greene, 115 Fed. 343 (1902) 16
Woods v. Nierstheimer, 328 U. S. 211 (1946) 3

Text Books

116 A. L. R. 1104 14

Supreme Court of the United States

OCTOBER TERM, 1952

No. .....

STATE OF NEVADA AND THE PEOPLE OF THE STATE OF NEW YORK,

Petitioners,

v.

JOSEPH STACHER,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WHITE PINE

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The State of Nevada by William T. Matthews, its Attorney General, and The People of the State of New York by Nathaniel L. Goldstein, Attorney General of the State of New York, respectfully petition for a writ of certiorari to review an order (R. 82) of the Seventh Judicial District Court of the State of Nevada, in and for the County of White Pine, hereinafter referred to as the District Court, rendered January 19, 1953, which made a writ of habeas corpus permanent and freed the respondent, Joseph Stacher, from restraint by either the Sheriff of White Pine County, Nevada, or New York State Agents, under the

Executive Warrant of the Governor of Nevada (R. 10) granted on the requisition of the Governor of New York (R. 10).

The time for filing this petition has been extended to and including May 8th, 1953, by an order granted by Mr. Justice Jackson and dated April 15, 1953.

I

Summary Statement of Matters Involved

Pursuant to a request by the Governor of the State of New York for the extradition of the respondent Joseph Stacher, as a fugitive from justice, on charges of conspiracy, forgery and gambling for which he was under indictment (R. 27) in New York, the Governor of Nevada held a hearing on November 21, 1952, at the Capitol in Carson City, to determine whether he should issue an Executive Warrant for the respondent's arrest. The Governor issued said Warrant (R. 10) on the same day. Also on the same day, the respondent surrendered himself under the Executive Warrant in Las Vegas, located in Clark County, Nevada, where he petitioned the District Court for a writ of habeas corpus. The hearing on this writ was set for November 28, 1952, and the respondent was released on $5,000 bail. A Special Assistant Attorney General of New York and State Troopers from that State went to Las Vegas to attend the hearing. The respondent, however, failed to appear and his bond was forfeited and the writ dismissed (R. 9).

The respondent, Joseph Stacher, thereafter on December 9, 1952, again surrendered himself under the Governor's Warrant, this time in White Pine County, Nevada. He petitioned the District Court for and was granted an alternate writ of habeas corpus (R. 4), and posted $10,000

bail for appearance at a hearing on his application. The hearing was held on January 12, 1953, at which a Special Assistant Attorney General of the State of New York was present and made an attorney of record (R. 82). On January 19, 1953, the Court granted its order (R. 82) making the said writ permanent and assigned as reasons therefor that the respondent had not been substantially charged with a crime in New York and therefore was not a fugitive subject to extradition and was illegally restrained of his liberty (R. 83).

II

Jurisdictional Statement

1. Jurisdiction is invoked under 28 U. S. C., § 1257 (3), which provides that a final judgment by the highest court of a state in which a judgment could be had, may be reviewed by this Court upon writ of certiorari, where there is involved a right or privilege under the Constitution or a statute of the United States.

2. The order (R. 82) sought to be reviewed is a final judgment rendered by the highest court of the State of Nevada in which a decision could be had, inasmuch as no appeal lies in that State from the granting by a District Court of a writ of habeas corpus in an extradition proceeding.

Ex parte Sullivan, 65 Nev. 128, 189 P. 2d 338 (1948).

In such cases, this Court has jurisdiction to review the judgment of a lower State Court where Federal or Constitutional questions are involved.

Woods v. *Nierstheimer*, 328 U. S. 211 (1946).

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3. The rights of the parties depend upon the proper construction and application of the extradition clause in the United States Constitution (Art. IV, § 2, par. 2) as well as the implementing Federal extradition statute (18 U. S. C. § 3182).

South Carolina v. *Bailey*, 289 U. S. 412, 419 (1933).

The extradition statute provides that when the Governor of a state demands a person, as a fugitive from justice, of the Governor of a state to which that person has fled, and produces an authenticated copy of an indictment found in the demanding state charging such person with having committed a felony or other crime, the Governor of the state to which the person had fled shall cause him to be arrested and secured and shall notify the Governor making the demand and shall cause the fugitive to be delivered to the Agent of the demanding Governor if he appears within thirty days.

Petitioners claim a right under Article IV, § 2, par. 2 of the Constitution and under 18 U. S. C., § 3182, namely, the right to extradite the respondent. The granting of a permanent writ of habeas corpus was a denial of this right, which is subject to review by this Court.

South Carolina v. *Bailey, supra*, 289 U. S. 412 (1933);

Drew v. *Thaw*, 235 U. S. 432 (1914).

III

The Questions Presented

1. Did the District Court of the State of Nevada have the right to inquire into the sufficiency of the New York indictment?

2. If such right exists, does the New York indictment substantially charge the respondent with a crime or crimes against the Laws of New York?

IV

Reasons Relied on for Allowance of the Writ of Certiorari

1. The State Court has decided Federal constitutional and statutory questions of substance, relating to the right of extradition, in a way which is plainly at variance with applicable decisions of this Court. Specifically, the Nevada Court in effect made a determination that the New York indictment was insufficient. An identical inquiry into the sufficiency of an indictment was held by this Court to be beyond the constitutionally permissible scope of examination by a Court in habeas corpus proceedings.

Pierce v. *Creecy*, 210 U. S. 387 (1908).

See *Munsey* v. *Clough*, 196 U. S. 364, 373 (1905).

2. Even if an inquiry into the sufficiency of the indictment as a pleading were proper, important rights of petitioners have still been violated by this order. The intent and purpose of the extradition clause in the Constitution (Art. IV, § 2, par. 2) and the Federal extradition statute (18 U. S. C., § 3182) have been thwarted by the judgment of the Nevada Court that the New York indictment did not substantially charge respondent with a crime, whereas, in fact, the counts in the indictment charging the respondent with commission of numerous crimes in New York, substantially in the language of the criminal statutes, are all valid and substantial charges as a matter of law.

Ex parte Reggel, 114 U. S. 642, 650-1 (1885).

3. The questions presented are of great public importance in that this respondent has avoided extradition

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and the Warrant of the Governor of the State of Nevada has been nullified without basis in law or in fact. The precedent which this sets is a dangerous one. This Court has repeatedly said that faithful, vigorous enforcement of the extradition laws is vital to the harmony and welfare of the states.

Appleyard v. *Massachusetts*, 203 U. S. 222, 227-8 (1906);
McNichols v. *Pease*, 207 U. S. 100, 112 (1907);
South Carolina v. *Bailey*, *supra*, 289 U. S. 412, 421 (1933).

WHEREFORE, petitioners pray that a writ of certiorari issue to the Seventh Judicial District Court of the State of Nevada in and for the County of White Pine to the end that the aforesaid errors may be corrected by this Court.

Dated: May 4, 1953.

STATE OF NEVADA,
Petitioner,

WILLIAM T. MATTHEWS,
Attorney General of Nevada,
Solicitor for the State of Nevada.

THE PEOPLE OF THE STATE OF NEW YORK,
Petitioners,

NATHANIEL L. GOLDSTEIN,
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General of Nevada,

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EDWARD L. RYAN,
Assistant Attorney General
of New York.

BRIEF IN SUPPORT OF PETITION

Statement

The factual statement of the matters involved is sufficiently summarized in the petition to obviate repetition here

Jurisdiction

The jurisdiction of this Court also is sufficiently stated, and supported by citations, in the petition. We do not repeat it here.

The Order Sought to be Reviewed

The sole basis for the order (R. 82) of the District Court of Nevada was that the respondent (Stacher) had not been substantially charged with a crime in New York and, therefore, was not a fugitive from justice subject to extradition and was illegally restrained of his liberty. The District Court held (R. 83):

> "Upon consideration of the evidence before us, voluminous citations, argument of counsel, and conduct of various counsel, we conclude that Petitioner is not substantially charged in the demanding state, and is not therefore, a fugitive subject to extradition, but is illegally restrained of his liberty."

The Questions Presented

The decision of the District Court raises two questions for presentation to this Court:

> "1. Did the District Court of the State of Nevada have the right to inquire into the sufficiency of the New York indictment?
>
> "2. If such right exists, does the New York indictment substantially charge the respondent with a crime or crimes against the Laws of the State of New York?"

Outline of Argument

It is the contention of the petitioners that the District Court erred in its determination on both of these questions and, by reason thereof, violated the rights of the petitioners as established by the extradition clause of the Constitution of the United States (Article IV, § 2, ¶ 2) as well as the implementing Federal extradition statute (18 U.S.C. § 3182). It is the further contention of the petitioners that the order of the District Court of the State of Nevada is in conflict with decisions of this Court rendered in interstate extradition proceedings which have come before it.

ARGUMENT

I

The District Court of Nevada was in error in passing upon the sufficiency of the New York indictment.

This precise question has been decided many times by this Court and the rule laid down by the decisions is that it is the province of the demanding State alone to determine whether an offender has been charged with a crime in that State. As was said in *Munsey* v. *Clough*, 196 U. S. 364 (1905), at page 373:

> "The indictment undoubtedly set forth a substantial charge against the plaintiff in error, and the facts therein set forth constituted a felony in the Commonwealth of Massachusetts, as certified by the district attorney. The sufficiency of the indictment, as a matter of technical pleading, will not be inquired into on *habeas corpus*. *Ex parte Reggel*, 114 U. S. 642; *Pearce* v. *Texas*, 155 U. S. 311; *Ex parte Hart*, 59 Fed. Rep. 894.
>
> "If the indictment be for three district offenses (although of the same nature) set out in the three different counts, as is argued by plaintiff in error, it will not be presumed that such an indictment is void under

the laws of Massachusetts, and the question of procedure under the indictment is one for the courts of the State where it was found. The courts of that State would undoubtedly protect her in the enjoyment of all her constitutional rights. These are matters for the trial court of the demanding State, and are not to be inquired of on this writ. * * *"

In *Pierce* v. *Creecy*, 210 U. S. 387 (1908), defendant attempted to attack the indictment against him upon grounds similar to those urged by the respondent in this case. He argued, *inter alia*, that the charge of false swearing was not pleaded with sufficient certainty, that insufficient facts were alleged which were necessarily inconsistent with the alleged false affidavits. Finally, he argued that upon the face of the indictment prosecution was barred by the statute of limitations. Said the Court, in affirming the denial of a writ of habeas corpus, (at pages 403-5):

"All the other objections are appropriate to a demurrer or a motion to quash or in arrest of judgment. They are attacks upon the indictment as a criminal pleading, * * *. If well founded, they show that the indictment is bad. But the Constitution does not require, as an indispensable prerequisite to interstate extradition, that there should be a good indictment, or even an indictment of any kind. * * * The indictment, whether good or bad, as a pleading, unmistakably describes every element of the crime of false swearing, as it is defined in the Texas Penal Code, * * *."

* * *

"This court, in the cases already cited, has said, somewhat vaguely but with as much precision as the subject admits, that the indictment, in order to constitute a sufficient charge of crime to warrant interstate extradition, need show no more than that the accused was substantially charged with crime. This indictment meets and surpasses that standard, and is enough. If more were required it would impose upon courts, in the trial of writs of *habeas corpus*, the duty of a critical examination of the laws of States with whose juri-

prudence and criminal procedure they can have only a general acquaintance. Such a duty would be an intolerable burden, certain to lead to errors in decision irritable to the just pride of the States and fruitful of miscarriages of justice. The duty ought not to be assumed unless it is plainly required by the Constitution, and, in our opinion, there is nothing in the letter or the spirit of that instrument which requires or permits its performance."

In *Drew* v. *Thaw*, 235 U. S. 432 (1914), Mr. Justice Holmes said (at pages 439-40):

"* * * the purpose of the writ is not to substitute the judgment of another tribunal upon the facts or the law of the matter to be tried. * * * The technical sufficiency of the indictment is not open. * * * When, as here, the identity of the person, the fact that he is a fugitive from justice, the demand in due form, the indictment by a grand jury for what it and the Governor of New York allege to be a crime in that State and the reasonable possibility that it may be such, all appear, the constitutionally required surrender is not to be interfered with by the summary process of *habeas corpus* * * *."

See, also, *Biddinger* v. *Commissioner of Police*, 245 U. S. 128, 134-135 (1917).

The rule laid down in the cited cases is applicable here. The District Court of Nevada erred in passing upon the sufficiency of the New York indictment.

II

The New York indictment is valid and sufficient and it substantially charges the Respondent with the commission of crimes under the laws of the State of New York.

The indictment (R. 27) contains twenty-one counts, of which eight counts (Nos. 1, 3, 6, 7, 8, 9, 10 and 11) apply to this respondent and charge him with crimes against the Laws of the State of New York as follows:

First Count (R. 27)—"the crime of CONSPIRACY in violation of Section 580 of the Penal Law."

Third Count (R. 39)—"the crime of OBTAINING THE SIGNATURE OF A PERSON TO A WRITTEN INSTRUMENT WITH INTENT TO CHEAT AND DEFRAUD, designedly, by aid of false pretense in violation of Section 932 of the Penal Law."

Sixth Count (R. 46)—"the crime of FORGERY IN THE THIRD DEGREE, in violation of Paragraph 1 of the first Subdivision of Section 889, of the Penal Law."

Seventh Count (R. 47)—"the crime of FORGERY IN THE THIRD DEGREE, in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law."

Eighth Count (R. 49)—"the crime of FORGERY IN THE THIRD DEGREE, in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law."

Ninth Count (R. 51)—"the crime of FORGERY IN THE THIRD DEGREE in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law."

Tenth Count (R. 52)—"the crime of FORGERY IN THE THIRD DEGREE in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law."

Eleventh Count (R. 54)—"the crime of FORGERY IN THE THIRD DEGREE in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law."

The material provisions of Sections 580, 889 and 932 of the Penal Law of New York are set out in the Appendix to this brief.

An examination of the eight counts of the indictment charging this respondent with crimes reveals a detailed pleading that thoroughly and legally sets out the charges. The indictment fully and fairly acquaints the respondent with the charges against him. It complies fully with the provisions of Section 275 of the New York Code of Criminal Procedure, which provides:

"§ 275. Indictment, what to contain

"The indictment must contain:

"1. The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties;

"2. A plain and concise statement of the act constituting the crime, without unnecessary repetition."

Although the indictment speaks for itself as to its legality, it is deemed advisable to review briefly respondent's contentions raised in the lower Court.

We do so without in any sense retreating from the legal positions asserted in this brief.

Respondent made the following objections to the indictment:

1. That the indictment must set out in detail the acts and means by which the respondent aided and abetted. We contend that the indictment does set out such details as are required.

The rule in New York is stated in *People* v. *Seldner*, 62 App. Div. 357, 71 N. Y. Supp. 35 (1901), at page 360:

> "This indictment was sufficient to warrant the conviction of appellant as a principal. It was not necessary to plead the evidence which the People claim constituted aiding and abetting the other defendants in the commission of the felony charged against them. The facts constituting the crime were fully stated. The evidence by which the People proposed to connect defendant with it is not set forth, but the facts are stated according to their legal effect. The words 'aided and abetted' and 'concerned in' have a well-defined legal meaning, and as used in this indictment they charge appellant with having counselled, assisted and encouraged the other defendants in the commission of every act constituting the crime. The facts constituting the crime committed by the other defendants having been sufficiently set forth, it was sufficient to charge defendant with having been willfully and feloniously concerned in and with having willfully and feloniously aided them in the commission of that crime. (*People* v. *Bliven*, 112 N. Y. 79; *People* v. *Batterson*, 50 Hun, 44; *People* v. *Bosworth*, 64 id. 72; *People* v. *Fitzgerald*,

156 N. Y. 253, 257; *People* v. *Kief*, 126 id. 661; *People* v. *Willis*, 158 id. 392; *People* v. *Kelly*, 11 App. Div. 495, 496; *People* v. *Peckens*, 153 N. Y. 576, 587.)"

Wide application of the rule in numerous judicatures is indicated by the citations supporting the following annotation in 116 A. L. R. 1104:

> "The rule almost universally adopted is that an indictment of an accessory to a crime need not set forth the specific facts or means by which the alleged accessory procured, aided and abetted the commissions of a crime, * * *."

See, also, *People* v. *Farson*, 218 App. Div. 488, 492, 218 N. Y. Supp. 41 (1926); aff'd, 244 N. Y. 413, 155 N. E. 724 (1927).

2. That in count three (R. 39) the respondent must be charged under Section 130 of the Alcoholic Beverage Control Law of New York, because it is specific legislation, rather than under the general statute, Penal Law of New York, Section 932. In New York the law is to the contrary. In *People* v. *Hines*, 284 N. Y. 93, 105, 29 N. E. 2d 483 (1940), the Court of Appeals of New York held:

> "Also the principle is applicable that the State may proceed under a general statute even though a more specific one is available. A specific statute does not necessarily replace a more general statute, and does not become the exclusive method of prosecution. Authorities in this State and elsewhere confirm this principle. In *People* v. *Bord* (243 N. Y. 595) defendant urged that the existence of a specific statute covering the exact act with which he was charged prevented a prosecution for the felony under the more general statute. This court rejected that argument."

3. That the statute of limitations had run against count one of the indictment (R. 27). Under this count, the respondent is accused of committing the crime of Con-

spiracy, a misdemeanor, in violation of Section 580 of the Penal Law of New York, which provides in part:

"§ 580. Definition and punishment of conspiracy

"If two or more persons conspire:

"1. To commit a crime; or,

* * * * *

"6. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws,

"Each of them is guilty of a misdemeanor."

Under this count, the respondent is charged with conspiracy with others (R. 27):

"(a) to commit acts injurious to public morals and for the perversion and obstruction of the due administration of the laws and (b) to commit crimes, to wit, the crimes of violating Sections 664, 665, 881, 889, 970 and 973 of the Penal Law, in that said defendants did unlawfully, knowingly, wilfully and corruptly conspire to commit the crimes of FORGERY IN THE THIRD DEGREE, UTTERING A FORGED INSTRUMENT, BEING COMMON GAMBLERS, MAINTAINING, OWNING AND OPERATING A GAMBLING ESTABLISHMENT, to wit, ARROWHEAD INN, and certain gambling casinos thereto annexed and a part thereof, and MISCONDUCT OF DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES OF CORPORATIONS, to wit, the payment to stockholders of a part of the capital stock of a corporation, the unlawful application of funds of a corporation to the purchase of shares of its own stock, and the knowing receipt of the property of a corporation and, with the intent to defraud, the omission to make a full and true entry thereof in the books and accounts of the corporation."

The count fully sets forth seventeen specifications of the acts constituting part of the Conspiracy (R. 28), and forty-two specifications of overt acts running from July 11, 1928 to July 1, 1952 (R. 31).

Among the crimes which it is charged the respondent conspired to commit, two (Uttering A Forged Instrument, Penal Law of New York, § 881, and Forgery In The Third Degree, Penal Law of New York § 889) are felonies. The others are misdemeanors.

Section 142 of the Code of Criminal Procedure of New York provides:

> "§ 142. Limitation for prosecutions other than murder or kidnapping
>
> "A prosecution for a felony, other than murder or kidnapping, or a prosecution for the crime of conspiracy to commit a felony must be commenced within five years after its commission, except where a less time is prescribed by statute. And a prosecution for all misdemeanors other than a conspiracy to commit a felony must be commenced within two years after its commission."

The law is clear and without exception that the acts of one conspirator bind all the co-conspirators and that the statute does not run from the first overt act, but rather from the last overt act set out in the indictment. (*People* v. *Hines*, *supra*, 284 N. Y. 93, 29 N. E. 2d 483 (1940); *United States v. Greene*, 115 Fed. 343 (1902); *Marino* v. *United States*, 91 F. 2d 691 (1937).) In count one of this indictment, the last overt act set out was on July 1, 1952 (R. 37). It is therefore impossible for respondent to maintain successfully that the statute of limitations had run.

4. That the indictment must allege in the forgery counts therein that respondent was an officer or employee of the organization.

That was the law in New York prior to 1912 (during that year the second portion of Penal Law § 889 was en-

acted) but has since changed as is clearly pointed out in *People* v. *Smith*, 177 App. Div. 152, 163 N. Y. Supp. 283 (1917), aff'd, without opinion, 221 N. Y. 590, 117 N. E. 1080, in the following language (at page 154):

> "The second indictment clearly charges a different crime, in violation of the provisions of the last paragraph of said section 889 of the Penal Law, * * * in that *with intent to defraud the creditors of said firm and to conceal from them and from other persons interested* matters materially affecting the financial condition of the firm the defendant feloniously altered, erased and obliterated an entry in a deposit book of the firm showing an indebtedness from the firm to him. This is clearly a different crime, depending in no manner upon whether the members of the firm consented to such alteration or whether the same was made by an employee of the firm by direction of one of the members." (original emphasis)

Therefore, the counts of forgery against respondent are valid.

We submit that the arguments presented by the respondent here to the Court below have no support in fact or in law.

Conclusion

The District Court of Nevada has followed a line of inquiry not permitted by the Constitution of the United States and the Federal extradition statute. Even if pursuit of such inquiry were permissible, its finding that the New York indictment did not substantially charge the respondent with a crime, is wholly without merit or basis and constitutes a violation of petitioners' constitutional and statutory rights.

The order of the District Court, without basis of law or fact, frustrates the Chief Executives of the States of

Nevada and New York in the exercise of constitutional and statutory powers and duties.

WHEREFORE, it is respectfully submitted that the petition for writ of certiorari be granted.

Dated: May 4, 1953.

WILLIAM T. MATTHEWS,
Attorney General of Nevada,
Solicitor for the State of Nevada.

NATHANIEL L. GOLDSTEIN,
Attorney General of New York,

WENDELL P. BROWN,
Solicitor General of New York,
Solicitors for The People of the State of New York.

Of Counsel:

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PAUL W. WILLIAMS,
Special Assistant Attorney General of New York,

EDWARD L. RYAN,
Assistant Attorney General of New York.

APPENDIX

Penal Law of New York

§ 580. Definition and punishment of conspiracy

If two or more persons conspire:

1. To commit a crime; or,

• • •

6. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws,

Each of them is guilty of a misdemeanor.

§ 889. Forgery in third degree

A person who:

1. Being an officer or in the employment of a corporation, association, partnership or individuals falsifies, or unlawfully and corruptly alters, erases, obliterates or destroys any accounts, books of accounts, records, or other writing, belonging to or appertaining to the business of the corporation, association or partnership or individuals; or

• • •

Is guilty of forgery in the third degree.

A person who, with intent to defraud or to conceal any larceny or misappropriation by any person of any money or property:

• • •

4. The altering, erasing, obliterating, or destruction of any account, book of account, record, or writing, or the making of a false entry in an account, statement of finan-

cial condition, or book of accounts, or the willful omission of material entries in such account, statement or books of account, by any person whether by his own hand or the hand of another, if made with intent to defraud creditors or to conceal a crime, or to conceal from creditors or stockholders or other persons interested matters materially affecting the financial condition of any individual, corporation, association, or partnership; or to provide a basis for the obtaining of credit or property by or for such individual, corporation, association, or partnership, shall render such person guilty of forgery in the third degree, within the meaning of this section; but this provision shall not apply to any clerk, bookkeeper, or other employee, who, without personal profit or gain, merely executes the orders of his employer.

§ 932. Obtaining property by false pretenses.

A person who, with intent to cheat or defraud another, designedly, by color or aid of a false token or writing, or other false pretense, obtains the signature of any person to a written instrument, is punishable by imprisonment in a state prison for not more than three years, or in county jail for not more than one year, or by a fine of not more than three times the value of the money or property affected or obtained thereby, or by both such fine and imprisonment.